Filed 5/17/10 In re D.J. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re D.J., a Person Coming Under the Juvenile Court Law.	B217569 (Los Angeles County Super. Ct. No. CK75536)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. STEPHANIE C., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Robert L. Stevenson, Juvenile Court Referee. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

Stephanie C., the mother of four young children, appeals from the juvenile court's disposition order removing the children from her physical custody after it sustained a dependency petition finding her male companion, Omar S., Sr., the father of the two youngest children, Marina S. and Omar S., Jr., had sexually abused Stephanie C.'s then-five-year-old daughter Reina J., had inflicted severe physical abuse on her and had subjected her to acts of cruelty. The juvenile court also found Stephanie C. herself had physically abused Reina J. and, although aware of the ongoing physical and sexual abuse of the child by Omar S., Sr., took no action to protect her. Stephanie C.'s sole contention on appeal is that the disposition findings and orders regarding Reina J. and her older brother D.J., Jr. must be reversed because the juvenile court and the Los Angeles County Department of Children and Family Services (Department) failed to comply with certain requirements of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (ICWA). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Dependency Petition, Detention of the Children and Subsequent Hearings and Orders Regarding Placement*

The Department filed a juvenile dependency petition on December 5, 2008 on behalf of D.J., Jr., Reina J., Marina S. and Omar S., Jr., alleging the children had suffered (in the case of Reina J.)[1] or there was a serious risk they would suffer serious physical harm inflicted nonaccidentally by both Omar S., Sr. and Stephanie C. (Welf. & Inst. Code, § 300, subd. (a).)[2] The petition further alleged that Omar S., Sr. and Stephanie C. had a two-year history of domestic violence and engaged in violent altercations in the children's presence (§ 300, subd. (a)), that Stephanie C. was aware of the ongoing physical abuse of Reina J. and had failed to protect her, endangering all four children's

---

[1] The details of Omar S., Sr.'s repeated, brutal attacks on Reina J. and Stephanie C.'s participation in the abuse of her daughter are not material to the limited issue before us in this appeal.

[2] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

physical safety and emotional well-being (§ 300, subd. (b)), that D.J., Sr., the father of D.J., Jr. and Reina J., had failed to consistently provide the children with the necessities of life (§ 300, subds. (b) & (g)), and that Omar S., Sr.'s repeated physical abuse included acts of cruelty (§ 300, subd. (i)) and sexual abuse (§ 300, subd. (d)). Criminal charges were subsequently filed against both Omar S., Sr. and Stephanie C.

At the detention hearing held on December 5, 2008 the juvenile court issued a temporary restraining order protecting Stephanie C. and the children from Omar S., Sr., found a prima facie case for detaining the children and vested temporary placement and custody with the Department. D.J., Sr. was found to be the presumed father of D.J., Jr. and Reina J. Omar S., Sr. was found to be the presumed father of Marina S. and Omar S., Jr. Stephanie C. and D.J., Sr. were allowed monitored visitation with the children. The court ordered no visitation of any sort for Omar S., Sr. On December 22, 2008, following a hearing, the court issued a three-year restraining order protecting Stephanie C. and the children from Omar S., Sr.

The Department filed a jurisdiction/disposition report on January 14, 2009. At the jurisdiction hearing on January 26, 2009 Stephanie C., D.J., Sr. and Omar S., Sr. all submitted on the Department's reports. The juvenile court sustained 14 counts of the dependency petition as amended and found the children described by section 300, subdivisions (a), (b), (d), (g) and (i). The matter was continued for a contested disposition hearing. On February 6, 2009 the Department filed an addendum report regarding disposition.

At a disposition hearing on February 6, 2009 the court denied family reunification services to Omar S., Sr. pursuant to section 361.5, subdivisions (b)(6) and (c), finding it would not be in the best interests of Marina S. or Omar S., Jr. to provide such services. The contested disposition hearing as to Stephanie C. and D.J., Sr. took place over several court days in March, April and May 2009. On May 13, 2009 the court ordered suitable placement for all four children and denied any reunification services to Stephanie C.

D.J., Sr. was granted reunification services, ordered to attend parent education classes and to meet all conditions of his current probation.

The court set a selection and implementation hearing for Marina S. and Omar S. (§ 366.26) and a six-month review hearing pursuant to section 366.21, subdivision (e), for D.J., Jr. and Reina J. Stephanie C. filed a timely notice of appeal from the disposition order with respect to D.J., Jr. and Reina J. She did not file either a notice of appeal or a petition for extraordinary writ review of the disposition order with respect to Marina S. and Omar S., Jr. (See § 366.26, subd. (l); Cal. Rules of Ct., rule 5.600(b).)

At the six-month review hearing on November 23, 2009, following orders liberalizing D.J., Sr.'s visitation with D.J., Jr. and Reina J., the juvenile court placed D.J., Jr. and Reina J. with D.J., Sr., under the supervision of the Department. At the selection and implementation hearing for Marina S. and Omar S., Jr. held on January 7, 2010, the court identified adoption as the children's permanent plan and ordered them placed in the home of their prospective adoptive parents. At a continued, contested hearing on March 4, 2010, the court terminated the parental rights of Stephanie C. and Omar S., Sr. as to Marina S. and Omar S., Jr.[3]

2. *The ICWA Inquiries and Notices*

On December 5, 2008, when the Department filed its section 300 petition, it also filed mandatory Judicial Council forms ICWA-020 (parental notification of Indian status) and ICWA-010(A) (Indian child inquiry attachment). The ICWA-020, signed by Stephanie C., stated, "I may have Indian ancestry" and indicated "Navajo" as the name of tribe. However, the ICWA-010(A) forms, prepared by the Department's social worker, declared that "mother denied ICWA applies to her family" and checked the box next to

---

[3] We take judicial notice of the juvenile court's minute orders of November 23, 2009, January 7, 2010 and March 4, 2010 pursuant to Evidence Code sections 452, subdivision (d), and 459. The orders made at the six-month review hearing on November 23, 2009 and the selection and implementation hearings on January 7, 2010 and March 4, 2010, orders that post-date the disposition order challenged in this appeal, did not affect our analysis of the court's and Department's compliance with the requirements of ICWA.

the statement, "The child has no known Indian ancestry." The Department's December 5, 2008 detention report similarly stated, "The Indian Child Welfare Act does not apply. Upon interview by CSW [children's social worker] the children's mother stated that they have no Native American heritage."

At the detention hearing the juvenile court, after referring to Stephanie C.'s ICWA-020 form, asked her if she was a registered member of a tribe; and Stephanie C. answered no. The court then asked if anyone in her family was a registered member of a tribe, and Stephanie C. identified her grandfather (the children's maternal great-grandfather) although she said she was not sure. Maternal relatives in the courtroom also indicated the children's maternal great-grandfather may have Native American ancestry and provided the court with the correct spelling of his name. The court ordered the Department to provide ICWA notices.[4]

The Department's January 14, 2009 jurisdiction/disposition report (prepared for the January 26, 2009 hearing) stated ICWA notices for the hearing had been sent to "all federally recognized Navajo tribes in North America" and indicated copies of the notices were attached to the report.[5] The attached materials show notices were mailed on December 26, 2008 to the Navajo Region in Gallup, New Mexico; Navajo Children's Services in Window Rock, Arizona; Ramah Navajo School Board in Pine Hill, New Mexico; and Colorado River Indian Tribes in Parker, Arizona. Notices were also sent to the Secretary of the Interior in Washington, D.C. and to the Sacramento Area Director of the United States Department of the Interior. The notices identified Stephanie C. and stated she had said she may have a Navajo affiliation. (Omar S., Sr. and D.J., Sr. were identified as the fathers of their respective children.) Stephanie C.'s mother, who has the

---

[4] D.J., Sr., who was present at the detention hearing and represented by appointed counsel, confirmed he had no Native American ancestry. Several days later Omar S., Sr., also reported he had no Native American ancestry.

[5] The jurisdiction/disposition report and attachments cover approximately 230 pages in the clerk's transcript on appeal. Copies of the ICWA notices and certified mail receipts are found at several different places within the attachments.

same surname as her maternal grandfather, was identified, as was her date and state (California) of birth and her current residence in Las Vegas. A date of birth and name, "Silver War," was provided for Stephanie C.'s grandfather—the individual who she believed may have Native American ancestry. No information was provided on paternal relatives.

In connection with the contested disposition hearing on February 6, 2008, the Department filed a supplemental report that included, among other items, responses to the ICWA notices. The Ramah Navaho School Board wrote it had no record of the children but forwarded the notices to the Navajo Nation ICWA Office in Window Rock, Arizona. The Navajo Regional Office of the Bureau of Indian Affairs, Department of the Interior, acknowledged receipt of the Department's notice and stated the notice indicated the Navajo Nation had been given proper notice of the dependency proceedings. In addendum reports filed for continued disposition hearing dates, the Department provided additional responses from the Navajo Nation stating it was unable to verify eligibility for enrollment for any of the children and from the Colorado River Indian Nation stating none of the parents or the maternal grandmother was an enrolled member of the tribe. Signed return receipts for a number of the ICWA notices were also filed with the court prior to the final contested disposition hearing.

At the continued disposition hearing on April 20, 2009 the court indicated it had a number of return receipts ("green cards") to review before it made a finding on ICWA and said it would "deal with the ICWA issue a little bit later on." The court never returned to this issue on the record and made no formal ICWA findings other than its earlier determination that ICWA did not apply to either D.J., Sr. or Omar S., Sr.

CONTENTIONS

Stephanie C. contends the juvenile court's disposition findings and orders regarding Reina J. and D.J., Jr. must be reversed because the court and the Department

failed to comply with ICWA's inquiry and notice requirements and because the court failed to make required ICWA findings.[6]

DISCUSSION

The purpose of ICWA is to "'protect the best interests of Indian children and to promote the stability and security of Indian tribes and families.'" (*In re Karla C.* (2003) 113 Cal.App.4th 166, 173-174, quoting 25 U.S.C. § 1902; see also *In re Suzanna L.* (2002) 104 Cal.App.4th 223, 229; *In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1299.) "ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource." (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.)

ICWA provides certain procedural protections to limit the removal of children from Native American parents or custodians and to restrict their placement with non-Native American caregivers. To further that goal, ICWA requires notice to federally recognized tribes when there is reason to know a child affected by dependency proceedings may be an Indian child. "Notice is a key component of the congressional goal to protect and preserve Indian tribes and Indian families. Notice ensures the tribe will be afforded the opportunity to assert its rights under [ICWA] irrespective of the position of the parents, Indian custodian or state agencies." (*In re Kahlen W.* (1991) 233 Cal.App.3d 1414, 1421.)

For purposes of ICWA, an "Indian child" is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4).) When a court "knows or has reason to know that an Indian child is involved" in a juvenile dependency proceeding, the court

---

[6] Stephanie C.'s additional contention the Department failed to file the mandatory ICWA-010(A) form (Indian child inquiry attachment) with its section 300 petition is simply incorrect. As discussed, copies of an ICWA-010(A) form for each of the four children identified in the dependency petition were signed by the social worker and filed with the court; they are located immediately following the petition, detention report and addendum report in the clerk's transcript.

must give the child's tribe notice of the pending proceedings and its right to intervene. (25 U.S.C. § 1912(a); see *In re S.B.* (2005) 130 Cal.App.4th 1148, 1157.) ICWA itself does not expressly impose any duty to inquire as to Native American ancestry (see *In re A.B.* (2008) 164 Cal.App.4th 832, 838; *In re H.B.* (2008) 161 Cal.App.4th 115, 120); nor do the controlling federal regulations. (See 25 C.F.R. § 23.11(a); cf. *In re H.B.*, at p. 120.) However, long-standing, albeit nonbinding, federal guidelines provide "the state court shall make inquiries to determine if the child involved is a member of an Indian tribe or if a parent of the child is a member of an Indian tribe and the child is eligible for membership in an Indian tribe" (Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed.Reg. 67584, 67588, part B.5. (a); see *In re S.B.*, at p. 1158; *In re A.B.*, at pp. 838-839); and California law now mandates that the juvenile court and the Department "have an affirmative and continuing duty to inquire whether a child . . . is or may be an Indian child in all dependency proceedings . . . ." (§ 224.3, subd. (a); see also Cal. Rules of Court, rule 5.481(a).)[7]

Although acknowledging she was interviewed concerning possible Native American ancestry, Stephanie C. contends the Department failed to make sufficient inquiry of her maternal relatives and failed to inquire at all about the children's paternal relatives. However, maternal relatives were present in the courtroom at the detention hearing, and the juvenile court asked questions and obtained relevant information concerning the only relative (the children's maternal great-grandfather) identified as possibly belonging to a federally recognized tribe. The notices sent to the various Navajo tribal entities and the Bureau of Indian Affairs included all the information that had been provided. Stephanie C. makes no showing of any information that might have been

---

[7] ICWA authorizes the states to provide "a higher standard of protection to the rights of the parent . . . of an Indian child than the rights provided under [ICWA]." (25 U.S.C. § 1921; see *In re H.B.*, *supra*, 161 Cal.App.4th at p. 120.) Section 224, subdivision (d), states, if California law provides such a higher standard of protection, "the court shall apply the higher standard." (See *In re Damian C.* (2009) 178 Cal.App.4th 192, 197.)

obtained with further interviews and fails to demonstrate any basis for believing a different result would have been achieved if additional inquiries had been made. Thus, any error by the Department in this regard was harmless. (See *In re A.B.*, *supra*, 164 Cal.App.4th at p. 839 [reversal is not required when compliance with the inquiry requirement constitutes harmless error]; see also *In re S.B.*, *supra*, 130 Cal.App.4th at p. 1162 ["any failure to comply with a higher state standard, above and beyond what the ICWA itself requires, must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error"]; *In re H.B.*, *supra*, 161 Cal.App.4th at p. 122 [same].)[8]

Stephanie C. also identifies several errors and deficiencies in the ICWA notices sent. First, the case name on the ICWA-030 forms (Notice of Child Custody Proceedings for Indian Child) sent to the various Navajo entities is misstated, although the names and biographical information for the children actually involved in the dependency proceeding and their maternal relatives are correct. Second, the abbreviation for New Mexico in some of the mailing labels is incorrect ("NW" rather than "NM"). Third, various certified mailed receipts filed with the court contain inadequate information (and, in a few instances, no information at all) about the actual mailing date of the notices although that information can be inferred from other documents contained in the record and submitted to the juvenile court.

---

[8] Both ICWA regulations (25 C.F.R. § 21.11(d)(3)) and section 224.2, subdivision (a), require the Department to provide all known information about the children's parents, grandparents and great-grandparents without distinguishing between Native American and non-Native American relatives. Nonetheless, Stephanie C. does not suggest the failure to include information about the children's paternal relatives after both D.J., Sr. and Omar S., Sr., had formally stated to the court that they had no Native American ancestry had any impact on the review conducted by the Navajo Nation of its records to determine whether Reina J. or D.J., Jr. were eligible for membership. (See *In re Cheyanne F.* (2008) 164 Cal.App.4th 571, 577 [father stated he was registered member of Blackfeet Tribe; mother stated she had no Native American ancestry; failure to include information concerning maternal relatives in ICWA notices harmless error "in the absence of any indication that information concerning [mother's] family was relevant to the tribe's inquiry"].)

There is no question that the ICWA notices and mailing procedures utilized in this case were somewhat flawed. (In its brief in this court the Department concedes inclusion of an incorrect case name on some of the notices is an "embarrassing error.") But even though ICWA notice requirements are strictly construed, at least when, as here, the tribal entities identified as potentially interested have in fact received notice of the dependency proceedings and the relevant biographical information concerning the children and relatives who may have Native American ancestry and have responded to those notices indicating the children are not enrolled members of the tribe, substantial compliance, not perfection, is all that is demanded. (*In re Christopher I.* (2003) 106 Cal.App.4th 533, 566 ["[s]ubstantial compliance with the notice requirements of ICWA is sufficient"].) "[W]here notice has been received by the tribe, as it was in this case, errors or omissions in the notice are reviewed under the harmless error standard." (*In re E.W.* (2009) 170 Cal.App.4th 396, 402-403; accord, *In re Jonathan D.* (2001) 92 Cal.App.4th 105, 110.) As discussed, Stephanie C. has made no attempt to show that any of the minor errors she now identifies in any way implicated the interests protected by ICWA. Any error was harmless. (See *In re I.W.* (2009) 180 Cal.App.4th 1517, 1531 ["[N]ot all deficiencies in notice are prejudicial error. [Citation.] And mother does not suggest how the supposed deficiencies she notes would have made a difference given the information that was in the notices."].)

Finally, Stephanie C. argues the juvenile court's failure to make explicit ICWA findings requires reversal of the disposition findings and orders. Stephanie C. is correct that the juvenile court must determine whether proper notice was given under ICWA and whether ICWA applies to the proceedings. (*In re E.W., supra,* 170 Cal.App.4th at pp. 403-404; *In re Asia L.* (2003) 107 Cal.App.4th 498, 506.) Nonetheless, the court received responses from the Navajo Nation and the Colorado River Indian Nation indicating the children were not members of, or eligible for membership in, the tribe. Section 224.3, subdivision (e)(1), provides, "A determination by an Indian tribe that a child is or is not a member of or eligible for membership in that tribe . . . shall be

conclusive." In light of that determination and our conclusion that the ICWA notices substantially complied with the statutory requirements, the failure to make findings in this case—although improper—is not reversible error.

DISPOSITION

The juvenile court's disposition order is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.